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3:01-CV-01973 ACOSTA V. CITY OF SAN DIEGO

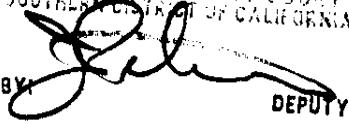
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8 UNITED STATES DISTRICT COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 ELIZABETH M. ACOSTA, ) Case No.  
 11 Plaintiff, ) COMPLAINT FOR DAMAGES AND  
 12 ) FOR INJUNCTIVE RELIEF  
 13 )  
 14 vs. ) [42 U.S.C. sec.1983 &  
 15 CITY OF SAN DIEGO, a municipal ) Pendent State Claims]  
 16 corporation; GARY HILL, JOSEPH )  
 KROUSS, ERIC STAFFORD, RAPHAEL )  
 17 CIMARRUSTI & DOES I-V, in their ) JURY DEMANDED  
 18 official & individual capacities; )  
 19 QUALCOMM STADIUM, an independent )  
 20 municipal agency; VOLUME SERVICES )  
 21 OF AMERICA dba MURPHY'S CLUB; )  
 22 MURPHY'S CLUB; HENRY FONTENETTE, )  
 23 MICHAEL OLIVER & DOES VI-X, in )  
 24 their representative & individual )  
 25 capacities; ELITE SHOW SERVICES, )  
 26 Inc.; DONALD WILLIAMS, VLADIMIR )  
 27 ATABEKIAN & DOES XI-XV, in their )  
 28 representative & individual )  
 29 capacities; SAN DIEGO CHARGERS, )  
 30 INC.; DOES XVI-XX, )  
 31 Defendants. )  
 32 )  
 33 )  
 34 )

35 1. This is an action at law and in equity to redress the  
 36 deprivation by Defendants of Plaintiff's rights, privileges and  
 37 immunities, secured by the First, Fourth and Fourteenth Amendments  
 38 to the Constitution of the United States, said deprivation of

1 Plaintiff's rights by Defendants being at all times under the color  
2 of state law, in derogation of Plaintiff's rights secured by  
3 42 U.S.C. sec.1983.

4 **COMMON ALLEGATIONS AS TO ALL DEFENDANTS AND  
ALL FEDERAL AND PENDENT STATE CLAIMS**

5 2. The jurisdiction of this Court is invoked under 28 U.S.C.  
6 sec.1333, this being an action authorized by law to redress the  
7 deprivation under color of state law, statute, ordinance,  
8 regulation, custom and usage of a right, privilege or immunity  
9 secured to Plaintiff by the First, Fourth and Fourteenth Amendments  
10 to the Constitution of the United States, as secured by 42 U.S.C.  
11 sec.1983.

12 3. Plaintiff is Elizabeth M. Acosta.

13 4. At all times pertinent to this Complaint: Defendant CITY  
14 OF SAN DIEGO ["City"] is a municipal corporation and a unit of  
15 local government duly formed and authorized under the laws of the  
16 State of California. As part of its governing function, and  
17 pursuant to enabling provisions under the California Government  
18 Code, the City provides and administers the SAN DIEGO POLICE  
19 DEPARTMENT ["SDPD"], and in accordance therewith employs persons  
20 responsible for law enforcement and the investigation and  
21 prosecution of public offenses; owns and administers Defendant  
22 Qualcomm Stadium, an independent municipal agency; contracts with  
23 Defendant Volume Services of America, Inc. d.b.a. Murphy's Club and  
24 Murphy's Club to provide a restaurant-bar within Qualcomm Stadium;  
25 and contracts with Defendant Elite Security Agency, Inc. to provide  
26 security services during stadium events, including football games.

27 5. At all times pertinent to this Complaint: Defendant  
28

1 QUALCOMM STADIUM ["Qualcomm"] is an independent municipal agency of  
2 Defendant City of San Diego, operating under the laws of the State  
3 of California and the laws and administration of Defendant City of  
4 San Diego, which rents its stadium facilities to Defendant San  
5 Diego Chargers, to play professional football competition under the  
6 National Football League; rents its service facilities to  
7 Defendants Volume Services of America d.b.a. Murphy's Club, and  
8 Murphy's Club, a restaurant-bar; employs Defendant Elite Security  
9 Agency, Inc. for security during football and other stadium events;  
10 and employs San Diego Police Officers for additional security  
11 during football and other stadium events.

12 6. At all times pertinent to this Complaint: Defendant SAN  
13 DIEGO CHARGERS, INC. ["Chargers"] is a California Corporation which  
14 operates a professional football team in the National Football  
15 League, playing its home games in Defendant Qualcomm Stadium in the  
16 County of San Diego; employs Defendant Elite Security Agency, Inc.  
17 for security during football games; and employs individual San  
18 Diego Police Officers for additional security and law enforcement  
19 during football games.

20 7. At all times pertinent to this Complaint: Defendant VOLUME  
21 SERVICES OF AMERICA, INC. d.b.a. MURPHY'S CLUB ["Murphy's Club"]  
22 is a foreign corporation doing business in the State of California,  
23 County of San Diego, under the d.b.a. MURPHY'S CLUB, providing a  
24 restaurant-bar within Defendant Qualcomm Stadium, serving as a  
25 sports bar during stadium events, including professional football  
26 games of Defendant San Diego Chargers; employs Defendant Elite  
27 Security Agency, Inc. to provide security services while in  
28 operation during stadium events; and employs individuals to provide

1 internal security and to control patrons within the bar. Defendant  
2 MURPHY'S CLUB is the entity under which Defendant VOLUME SERVICES  
3 OF AMERICA, INC. operates in Defendant Qualcomm Stadium.

4       8. At all times pertinent to this Complaint: Defendant ELITE  
5 SHOW SERVICES, INC. ["Elite Security"] is a California Corporation  
6 which provides security on a contract basis in the County of San  
7 Diego; in accordance therewith provides security for Defendants  
8 Qualcomm Stadium, San Diego Chargers, Inc. and Volume Services of  
9 America, Inc. d.b.a. Murphy's Club during stadium events, including  
10 Charger football games; and employs individual persons as security  
11 guards.

12       9. At all times pertinent to this Complaint: Defendants  
13 Officers GARY HILL, JOSEPH KROUSS, ERIC STAFFORD, RAPHAEL  
14 CIMARRUSTIE, and DOES I-V were and are duly appointed as sworn  
15 peace officers of the State of California, employed by Defendant  
16 City of San Diego as police officers; further, they were employed  
17 to provide security and law enforcement at Defendants Qualcomm  
18 Stadium during a football game stadium event; and they reside in  
19 the County of San Diego. All of these individual defendants are  
20 sued in their individual and official capacities, and are  
21 hereinafter collectively referenced as the "individual SDPD  
22 Defendants". Defendant City of San Diego and the individual SDPD  
23 Defendants are collectively referred to as the "City Defendants."

24       10. At all times pertinent to this Complaint: Defendants  
25 HENRY FONTENETTE, MICHAEL OLIVER and DOES VI-X were and are  
26 employed as unlicensed private security ["bouncers"] by Defendant  
27 Volume Services of America, Inc. d.b.a. Murphy's Club and by  
28 Murphy's Club; and they reside in the County of San Diego. All of

1 these individual defendants are sued in their individual and  
2 representative capacities, and are hereinafter collectively  
3 referenced as the "individual Murphy's Club Defendants".  
4 Defendants Volume Services of America, Inc. d.b.a. Murphy's Club,  
5 Murphy's Club and the individual Murphy's Club Defendants are  
6 collectively referred to as the "Murphy's Club Defendants."

7       11. At all times pertinent to this Complaint: Defendants  
8 DONALD WILLIAMS, VLADIMIR ATABEKIAN and DOES XI-XV were and are  
9 employed as licensed private security guards by Defendant Elite  
10 Security Agency, Inc.; and they reside within the County of San  
11 Diego. All of these individual defendants are sued in their  
12 individual and representative capacities, and are hereinafter  
13 collectively referenced as the "individual Elite Security  
14 Defendants". Defendants Elite Security Agency, Inc. and the  
15 individual Elite Security Defendants are collectively referred to  
16 as the "Elite Security Defendants."

17       12. At all times pertinent to this Complaint: Defendant DOES  
18 I-V were and are other unknown individual SDPD officers involved in  
19 the events herein; DOES VI-X are other unknown individual Murphy's  
20 Club bouncers involved in the events herein; DOES XI-XV are other  
21 unknown individual Elite Security guards involved in the events  
22 herein; and DOES XVI-XX are unknown entities with a legal interest  
23 in, who employed or contracted with, or held governing,  
24 administrative or supervisory authority over, other entity or  
25 individual defendants herein. This complaint will be amended and  
26 the true names of the Doe defendants added when their true  
27 identities are learned by plaintiff.

28       13. At all times pertinent to this Complaint: the individual

1 SDPD Defendants acted under color of their official capacities;  
2 further, these defendants acted separately and in concert under  
3 color of the statutes, ordinances, regulations, customs and usages  
4 of the State of California and the City of San Diego.

5       14. At all times pertinent to this Complaint: the individual  
6 SDPD Defendants separately and in concert executed the policies and  
7 customs established by directive and/or practice, by the City of  
8 San Diego, or officials empowered by law to make or express policy  
9 for the City of San Diego; further, the City of San Diego and  
10 those officials empowered by law to make or express policy for the  
11 City of San Diego have, by words, action and/or inaction caused  
12 and/or ratified the unlawful acts of the individual Defendants,  
13 including but not limited to a failure to adequately train and/or  
14 discipline the individual Defendants, and a failure to prevent  
15 future misconduct and harm of which said policy-makers knew or  
16 reasonably should have known.

17       15. At all times pertinent to this Complaint: all of the  
18 individual and private entity defendants were acting in concert  
19 with the public defendants who were duly sworn peace officers in  
20 the State of California, each of them appointed and employed by the  
21 City of San Diego, and who at relevant times herein acted under  
22 color of their official capacities under color of the statutes,  
23 ordinances, regulations, customs and usages of the State of  
24 California and/or the City of San Diego.

25       16. At all times pertinent to this Complaint: all of the  
26 individual and private entity defendants were acting under color of  
27 law in that their authority to commit the acts of which they are  
28

1 accused herein is provided under the authority and/or laws of the  
2 State of California and the City of San Diego.

3       17. At all times pertinent to this Complaint: each of the  
4 private and public defendants, both individuals and entities, were  
5 acting as agents, employees and/or principals of each other;  
6 further, each of the private defendants were acting as principals  
7 under which police officers were acting as their agents or in  
8 concert with them, as provided under state law; further, the  
9 private defendants were acting under the direction, advice and  
10 control of the defendant officers; and each entity defendant is  
11 liable by respondeat superior for all of the acts of each other  
12 defendant, except as limited by law for the City of San Diego in  
13 respect to the individual SDPD Defendants.

14       18. At all times pertinent to this Complaint: all of the  
15 individual and private entity defendants were acting under color of  
16 their representative capacities; further, said individual and  
17 private entity defendants were at all times acting within the  
18 course and scope of their employment and agency by their respective  
19 defendant entity employers and principals, and further acting as  
20 authorized agents for their employer, principals and each other.

21       19. At all times pertinent to this Complaint: each of the  
22 entity defendants authorized and/or caused the individual  
23 defendants to take the actions they took in respect to plaintiff,  
24 including but not limited to a failure to adequately train and/or  
25 supervise the individual defendants.

26       20. At all times pertinent to this Complaint: each of the  
27 private entity defendants and those corporate and/or partnership  
28 and/or company officials and agents empowered and authorized to

1 make decisions on behalf of the respective private entity  
2 defendants have, by words, action and/or inaction authorized,  
3 caused and/or ratified the acts of the individual private  
4 defendants, including but not limited to a failure to discipline  
5 them and others, nor to take any other appropriate corrective  
6 action, and having knowledge of the relevant surrounding  
7 circumstances.

8       21. The individual Defendants, separately and in concert,  
9 conspired to engage and engaged in the illegal conduct here  
10 mentioned, or joined the conspiracy of others, to the injury of  
11 Plaintiff of the rights, privileges and immunities secured to  
12 Plaintiff by the First, Fourth and Fourteenth Amendments to the  
13 Constitution of the United States and the laws of the United States  
14 and the State of California. One or more of said Defendants acted  
15 in furtherance of said conspiracy.

16       22. The individual Defendants, separately and in concert,  
17 conspired to engage and engaged in the illegal conduct here  
18 mentioned, or joined the conspiracy of others, to the injury of  
19 Plaintiff of the rights, privileges and immunities secured to  
20 Plaintiff by the Constitution and laws of the State of California,  
21 thereby denying Plaintiff the equal protection of the laws of the  
22 State of California, a right secured to Plaintiff by the Fourteenth  
23 Amendment to the Constitution of the United States. One or more of  
24 said Defendants acted in furtherance of said conspiracy.

25       23. At all times pertinent to this Complaint: The  
26 Defendants, and each of them, knew or should have known that the  
27 wrongs here mentioned involving Plaintiff were about to be  
28 committed; and further the Defendants had the power to prevent or

1 aid in preventing the commission of the same. Despite this, said  
2 Defendants refused and/or failed to prevent or aid in the  
3 preventing the commission of said wrongs, and said wrongs were in  
4 fact committed, denying Plaintiff her rights secured under the  
5 First, Fourth and Fourteenth Amendments to the Constitution.

6       24. At all times pertinent to this Complaint: the Defendants  
7 have conspired among one another, and with other persons not named  
8 herein and whose identities are unknown at present, to commit the  
9 unlawful acts described herein, and one or more acts in furtherance  
10 of said conspiracy have been committed.

11       25. Each of the Defendants participated in and/or caused the  
12 unlawful conduct mentioned herein.

13       26. Each of the Defendants herein knew or should have known  
14 that the wrongs here mentioned were being or about to be committed,  
15 whether by other defendants, or by public and/or police officers  
16 acting as agents of or in concert with one or more of the private  
17 defendants, and further had the power to prevent or aid in  
18 preventing the commission of the same or the injuries and damages  
19 arising therefrom. Despite this, said Defendants deliberately  
20 refused and/or failed to prevent or aid in the preventing the  
21 commission of said wrongs or infliction of said damages, and said  
22 wrongs were in fact committed and damages suffered, denying  
23 Plaintiff her rights secured under the First, Fourth and Fourteenth  
24 Amendments to the Constitution of the United States.

25       27. By contract and state and municipal law, Defendants  
26 Qualcomm Stadium and San Diego Chargers, and their contract  
27 entities and individual employees, act and operate as public or  
28

1 quasi-public agencies with public authority and under color of law  
2 of the State of California and the City of San Diego.

3       28. Pursuant to policy of Defendants Qualcomm, Chargers and  
4 Elite Security, patrons who engage in unlawful fighting or other  
5 disruptive behavior within the stadium during football games, or  
6 otherwise violate stadium rules, may be ejected from the stadium,  
7 within the discretion of stadium officials and security. Ejected  
8 patrons are photographed and recorded, to protect against any  
9 attempt to re-enter during that event.

10      29. Pursuant to policy of Murphy's Club, patrons who engage  
11 in unlawful fighting or disruptive behavior within the club, or who  
12 otherwise violate club rules, may be ejected from the club, within  
13 the discretion of club officials and security; and if such patrons  
14 resist or are to be also ejected from the stadium, bouncers are not  
15 to use physical force except in self-defense and security guards  
16 from Elite Security and/or police officers are to be summoned to  
17 enforce the ejection. These bar policies, including the  
18 prohibition against use of non-defensive force, are standard in the  
19 bar business.

20      30. SDPD Officers providing stadium security and law  
21 enforcement are at all times acting as peace officers, with the  
22 full authority as provided them by the State of California and the  
23 City of San Diego. They are empowered to eject patrons when  
24 lawfully requested by officials of Qualcomm Stadium, the Charger,  
25 Murphy's Club and/or Elite Security, in enforcement of State and  
26 City laws governing trespass; and to make arrests as authorized by  
27 the laws of the State of California and City of San Diego.

28

1       31. Pursuant to SDPD policy, persons arrested within Qualcomm  
2 Stadium are taken to an SDPD holding area within the stadium,  
3 wherein there is a camera system to videotape persons being brought  
4 in and being held in custody to assure a videotape record of their  
5 condition and circumstances while under restraint and arrest.

6       32. Pursuant to SDPD Use of Force Policy, officers are  
7 afforded discretion to utilize the carotid choke hold, by which the  
8 person is rendered unconscious by cutting off the oxygen supply to  
9 the brain via the carotid arteries; and to use a form of maximum  
10 restraint informally known as "hogtying" by which the person is  
11 handcuffed behind her back, her legs are also bound with a strap,  
12 and the legs are then strapped and tied backward to the cuffed  
13 hands. These forms of restraint can cause and have caused death,  
14 but are not treated as forms of deadly force under SDPD policy.

15       33. SDPD Use of Force Policy provides specific guidelines for  
16 the manner in which the carotid hold and the referenced maximum  
17 restraint is administered, some whose protocols are designed to  
18 reduce the risk of death to the person restrained.

19       34. SDPD Use of Force Policy also provides for a method of  
20 restraining a person, when four (4) or more officers are present  
21 and available, which involves the officers each restraining one of  
22 the person's limbs.

**FEDERAL CLAIMS AGAINST INDIVIDUAL DEFENDANTS**

24       35. On October 29, 2000, the Chargers played a football game,  
25 hosting the Oakland Raiders, at Qualcomm Stadium. Murphy's Club  
26 was open for business during the game, with Defendants Fontenette  
27 and Oliver on duty as bouncers; Elite Security was providing  
28 security, with Defendants Williams and Atabekian on duty; and

1 Defendant SDPD Officers Hill, Krouss, Stafford and Cimarrusti were  
2 on duty, with Hill and Krouss assigned as a team to the parking lot  
3 outside the stadium, and Stafford and Cimarrusti assigned as a team  
4 within the stadium.

5       36. Defendant Murphy's Club bouncers Fontenette and Oliver,  
6 by plaintiff's estimate, were over 6' tall and over 250 lbs. each.

7       37. Defendant Elite Security guards Williams and Atabekian,  
8 by plaintiff's estimate, were of average height and weight.

9       38. Defendant SDPD Officer Hill was 6'0" and 325 lbs. and is  
10 grossly out of shape. Defendant SDPD Officer Krouss was 6'4" and  
11 300 lbs. Defendant SDPD Officers Stafford and Cimarrusti, by  
12 plaintiff's estimate, were of average height and weight.

13       39. Plaintiff, her father Robert Acosta, Sr., her brother  
14 Robert Acosta, Jr., and the latter's wife and her sister-in-law,  
15 Susan Acosta, attended the Charger-Raider game in Qualcomm Stadium  
16 on October 29, 2000.

17       40. Plaintiff and Susan Acosta dressed in black for the game,  
18 signifying the Raider colors and their support for the visiting  
19 team. Plaintiff was then 5'4" and 140 lbs.

20       41. Plaintiff's employment at the time in October 2000 was as  
21 a bartender, who had served in that capacity for a number of years;  
22 and as a newly licensed real estate agent.

23       42. Prior to the game, Plaintiff and her family held a  
24 tailgate party in the parking lot of Qualcomm Stadium. During the  
25 tailgate party and the game, Plaintiff drank lightly, while Susan  
26 Acosta drank more heavily.

27       43. During the game, Plaintiff and Susan Acosta left their  
28 seats and, while walking around the stadium, entered Murphy's Club

1 and paraded through the dense, loud and mostly Charger fan crowd,  
2 yelling Raider chants.

3       44. Within two (2) minutes of their entry into Murphy's Club,  
4 Plaintiff and Susan Acosta were accosted by Defendant bouncers  
5 Fontenette and Oliver and were ejected. Fontenette, in directing  
6 Plaintiff to leave, took hold of her arm, and Plaintiff pulled away  
7 and told him not to touch her. Plaintiff did not refuse to leave,  
8 but Fontenette and Oliver, without waiting or speaking further,  
9 immediately seized hold of Plaintiff, by the shoulders and legs,  
10 and carried her out suspended in air, to loud cheers of the Charger  
11 fans.

12       45. Susan Acosta followed Plaintiff and the bouncers from the  
13 Murphy's Club, and engaged in a vulgar exchange with two (2) other  
14 patrons as they left, with Susan Acosta also using a racial slur.  
15 Plaintiff said nothing and did not resist; nor did she hear and nor  
16 was she aware of the verbal exchange between Susan Acosta and the  
17 other female patrons.

18       46. Outside Murphy's Club, Defendants Fontenette and Oliver  
19 put Plaintiff down, spoke with both Plaintiff and Susan Acosta, and  
20 instructed them not to return to the club. They did not eject them  
21 from the stadium, nor then summon Elite Security nor SDPD Officers.  
22 Plaintiff and Susan Acosta walked away after the conversation with  
23 the bouncers concluded.

24       47. Plaintiff and Susan Acosta then returned to their seats.  
25 Shortly thereafter, Plaintiff accompanied Susan Acosta when she  
26 again left her seat to use the stadium restroom.

27       48. While walking toward the restroom, Plaintiff and Susan  
28 Acosta passed within hailing distance those other patrons with

1 which Susan Acosta had had the verbal exchange as she left Murphy's  
2 Club. The patrons and Susan Acosta resumed their verbal exchange,  
3 with the patrons declaring that they thought they had been ejected  
4 from the game and would have them ejected from the stadium, and  
5 Susan Acosta repeating the racial slur, as she also walked closer  
6 to the other patrons. Plaintiff did not participate in the verbal  
7 exchange, and did not join Susan Acosta when she approached the  
8 other patrons.

9       49. The other patrons then walked away, and Susan Acosta went  
10 into the restroom, while Plaintiff waited for her outside the door.

11       50. While Plaintiff was waiting for Susan Acosta outside the  
12 door of the stadium restroom, she was approached by Defendant  
13 Security Guards Atabekian and Williams, and then by SDPD Officers  
14 Hill and Krouss, who asked her to accompany them to the Elite  
15 Security Office to check whether she had been previously ejected  
16 from the game; and requested identification.

17       51. Defendant SDPD Officers Hill and Krouss were out of  
18 position when they were inside the stadium, having left their posts  
19 in the parking lot.

20       52. Defendant Hill had spoken with security within Murphy's  
21 Club. Defendants Fontenette and Oliver falsely accused Plaintiff  
22 of engaging in fighting within the club.

23       53. Defendant Fontenette claimed that he first saw Plaintiff  
24 from a distance within Murphy's Club, trying to physically pull  
25 Susan Acosta from the grip of Defendant Oliver. He claimed that he  
26 did not see what originally instigated Oliver to seize Susan  
27 Acosta, but that Oliver later told him that Plaintiff and Susan  
28 Acosta had harassed and/or been fighting with other patrons. He

1 also claimed that he then sought to pull Plaintiff from Oliver and  
2 Susan Acosta; that Plaintiff then struck and kicked him; that he  
3 and Oliver then carried her out of the club; and that he did not  
4 seek to eject them from the stadium, but instructed them not to  
5 return to the club.

6       54. Defendant Oliver claimed that he first saw Plaintiff from  
7 a distance within Murphy's Club, resisting, striking and kicking  
8 Defendant Fontenette. He claimed that he did not see what  
9 originally instigated Fontenette to seize Plaintiff, but that  
10 Fontenette later told him that Plaintiff had harassed and/or been  
11 fighting with other patrons. He also denied any awareness of Susan  
12 Acosta, or any contact with her or any other associate of  
13 Plaintiff; but admitted that he aided Fontenette in carrying  
14 Plaintiff from the club; and that upon her ejection, she was told  
15 not to return to the club.

16       55. Defendant SDPD Officer Hill claims that he spoke with  
17 Defendant Fontenette, who informed him that Plaintiff had been  
18 fighting in Murphy's Club; had been ejected from the club; and that  
19 he intended to eject her and Susan Acosta from the stadium, but  
20 they ran way before he could do so. Defendant Fontenette denies  
21 speaking to Defendant Hill prior to Plaintiff's arrest; he did  
22 speak with Defendant SDPD Officer Stafford later, and gave the  
23 largely false version of events set forth in Paragraph 53 after  
24 seeing Plaintiff carried out in hogtied position.

25       56. Defendant Oliver spoke to Defendant Officer SDPD Hill,  
26 and gave him the largely falsified version of events set forth in  
27 Paragraph 54.

28

1       57. Plaintiff responded to Defendants Hill, Krouss, Atebekian  
2 and Williams by attempting to say that she had not been ejected, by  
3 attempting to explain what had happened at Murphy's Club, and by  
4 attempting to say that she did not have identification on her but  
5 could retrieve it.

6       58. Defendants Hill, Krouss, Atabekian and Williams would not  
7 permit Plaintiff to speak, and then ordered her to leave the  
8 stadium. When Plaintiff again attempted to speak and explain, she  
9 was placed under arrest without warning by Defendant Hill, who with  
10 excessive force from the outset attempted, also without warning, to  
11 turn Plaintiff around and handcuff her.

12       59. When Plaintiff did not respond promptly enough to the  
13 initial use of force as above-described, Defendant SDPD Officer  
14 Hill then immediately escalated the use of force to the use of  
15 deadly force in the form of the carotid choke hold.

16       60. Defendant SDPD Officer Hill, apparently unable to utilize  
17 lesser levels of force which also require reasonably adequate  
18 physical fitness and agility, has frequently used the carotid hold  
19 in the past, but is inadequately trained and is incompetent in the  
20 circumstances of its lawful use and proper implementation. He is  
21 unfamiliar with SDPD policy and training on its lawful use and  
22 proper implementation, and did not utilize those in applying the  
23 hold. Defendant Hill was actually garroting Plaintiff, with her  
24 feet off the ground, at times choking her at her windpipe, for up  
25 to 1-3 minutes, until he ceased as she went unconscious from lack  
26 of air in her lungs.

27       61. The manner in which Defendant Hill was choking Plaintiff  
28 and suspending her by her neck put her at risk of death or serious

1 bodily injury; indeed, a heavier person would likely have suffered  
2 a broken neck.

3       62. The manner in which Defendant Hill choked Plaintiff  
4 constituted deadly force, even though Plaintiff at no time used any  
5 unlawful force which would justify any use of force by the  
6 officers, much less deadly force.

7       63. As Plaintiff flailed in self-defense and struggle for  
8 life while the illegal and improper choke hold was being  
9 administered, Defendant SDPD Officer Hill ceased choking Plaintiff  
10 and, with the assistance of SDPD Officer Krouss threw Plaintiff to  
11 the pavement, face first, and handcuffed her behind her back; then,  
12 Officers Hill and Krouss, joined by Officer Stafford, hogtied  
13 Plaintiff; then the officers left Plaintiff face down on the  
14 pavement in the hogtied position for a substantial period of time;  
15 and then later carried her out face down, suspended by her arms and  
16 legs, contrary to safe procedures and putting her in great pain in  
17 her shoulders.

18       64. Defendant SDPD Officer Hill, apparently unable to utilize  
19 lesser levels of force which also require reasonably adequate  
20 physical fitness and agility, has frequently used the hogtie  
21 restraint in the past, but is inadequately trained and is  
22 incompetent in the circumstances of its lawful use and proper  
23 implementation. He is unfamiliar with SDPD policy and training on  
24 its lawful use and proper implementation, and did not utilize those  
25 in applying the restraint or in carrying the restrained suspect.  
26 He is also unfamiliar with other lesser forms of restraint for  
27 resisting offenders, including those available when there are other  
28 officers present to assist.

1       65. Defendant SDPD Officers Krouss and Stafford are  
2 inadequately trained and incompetent in the circumstances for  
3 lawful use and proper implementation of the maximum restraint  
4 "hogtying". They are unfamiliar with SDPD policy and training on  
5 its lawful use and proper implementation, and did not utilize those  
6 in applying the restraint or in carrying the restrained suspect.  
7 They are also unfamiliar with other lesser forms of restraint for  
8 resisting offenders, including those available when there are other  
9 officers present to assist.

10       66. The manner in which Defendants Hill, Krouss and Stafford  
11 controlled and restrained Plaintiff constituted deadly force, even  
12 though Plaintiff at no time used any unlawful force which would  
13 justify any use of force by the officers, much less deadly force.

14       67. The manner in which Defendants Hill, Krouss and Stafford  
15 hogtied Plaintiff, then placed her face down on the pavement, then  
16 carried her our face down and suspended by her limbs, put her at  
17 risk of death or serious bodily injury; indeed, a heavier person  
18 would likely have suffered death or serious injury.

19       68. Defendant Elite Security guards Atebekian and Williams  
20 assisted SDPD Officers Hill and Krouss in the use of force on  
21 Plaintiff while she was being choked and hogtied, each of them also  
22 using separately and in concert unlawful, unnecessary, unreasonable  
23 and excessive force on Plaintiff.

24       69. Plaintiff was carried to the holding area in the stadium,  
25 wherein the videotaping system was accidentally not turn on,  
26 leaving no film record.

27       70. Defendant SDPD Officer Cimarrusti permitted Susan Acosta,  
28 who had emerged from the restroom in the interim, to go and

1 retrieve Plaintiff's father, who she identified as a peace officer.  
2 Officer Cimarrusti informed Officer Acosta where the holding area  
3 was located, but officers in the holding area refused to permit  
4 Officer Acosta to see or speak with his daughter.

5       71. Plaintiff suffered numerous bruises and soreness on her  
6 body, and injury and soreness to her shoulders, neck and back area.

7       72. Plaintiff was arrested initially for trespass, and  
8 thereafter arrested and charged with misdemeanors of assault and  
9 battery on peace officers; assault and battery on security guards;  
10 and resisting arrest by police officers.

11       73. There was no probable cause for the warrantless arrest of  
12 Plaintiff on any of the charges, in violation of her rights under  
13 the Fourth Amendment.

14       74. The conduct of the Defendant SDPD Officers Hill, Krouss  
15 and Stafford constituted unlawful, unnecessary, excessive and  
16 unreasonable use of force, in violation of her rights under the  
17 Fourth Amendment.

18       75. The unlawful, unnecessary, unreasonable and excessive  
19 force employed in the arrest was at all times unreasonable under  
20 the totality of the circumstances and thereby violated the Fourth  
21 Amendment rights of Plaintiff.

22       76. Thereafter, the individual SDPD Officers, and each of  
23 them, filed falsified police reports, also containing material  
24 omissions concerning the unlawful conduct of defendants and the  
25 justifying circumstances for Plaintiff's conduct; which  
26 misrepresented the true facts of what had occurred, falsely stating  
27 and suggesting that Plaintiff had committed crimes in Murphy's Club  
28 and in response to efforts to eject and arrest her; and falsely

1 characterized events to support false conclusions that there was  
2 probable cause for Plaintiff's arrest and subsequent prosecution on  
3 those charges, and false conclusions that the use of force by  
4 Plaintiff justified the use of force by the officers.

5       77. Thereafter, the individual Elite Security Guards and  
6 Murphy's Club bouncers, and each of them, gave false statements  
7 also containing material omissions concerning the unlawful conduct  
8 of defendants and the justifying circumstances for Plaintiff's  
9 conduct; which misrepresented the true facts of what had occurred,  
10 falsely stating and suggesting that Plaintiff had committed crimes  
11 in Murphy's Club and in response to efforts to eject and arrest  
12 her; and falsely characterized events to support false conclusions  
13 that there was probable cause for Plaintiff's ejection, arrest and  
14 subsequent prosecution on those charges, and false conclusions that  
15 the use of force by Plaintiff justified the use of force by the  
16 bouncers, security guards and officers.

17       78. Based on the falsified submissions of the individual  
18 Defendants, the San Diego Office of City Attorney issued a criminal  
19 misdemeanor complaint against Plaintiff - i.e. as a result of the  
20 aforementioned false reports and statements, and the underlying  
21 unlawful conduct, Plaintiff was prosecuted on the charges for which  
22 she was arrested. Those false reports and statements were  
23 submitted to maliciously prosecute Plaintiff.

24       79. The aforementioned false reports and statements were  
25 intended to cause the prosecution and conviction of Plaintiff on  
26 false charges in order to justify the unlawful, unnecessary,  
27 excessive and unreasonable use of force by the individual defendant  
28 bouncers, officers and security guards; to justify the unlawful and

1 unreasonable ejection and arrest of Plaintiff; and to protect each  
2 and all of them, and their employers and principals, from the  
3 threat and risk of criminal and civil sanction and/or civil damages  
4 and other remedies. This constitutes a malicious, unlawful and  
5 improper ulterior motive for the prosecution and an abuse by the  
6 individual defendants of the process of the criminal courts.

7       80. There was no probable cause for the malicious prosecution  
8 of Plaintiff on any of the charges, nor for the abuse of process  
9 directed to Plaintiff, in violation of her rights under the Fourth  
10 Amendment.

11       81. The false arrest and unlawful use of force by the  
12 individual SDPD Officer defendants Hill, Krouse and Stafford denied  
13 Plaintiff's free speech rights under the First Amendment when she  
14 sought to exercise those rights in the initial contact with  
15 Plaintiff, when she sought to explain herself and clarify the  
16 circumstances which were being misapprehended and misrepresented.

17        82. The malicious prosecution and abuse of process by all of  
18 the individual defendants were designed to frustrate Plaintiff in  
19 the anticipated exercise of her First Amendment rights to seek  
20 administrative or civil redress for their false arrest and unlawful  
21 use of force, and the other misconduct leading to those abuses of  
22 authority and criminal acts against Plaintiff.

23        83. On June 19, 2001, following trial by jury, Plaintiff was  
24        acquitted on all charges.

**FEDERAL CLAIMS AGAINST ENTITY DEFENDANTS**

26        84. Plaintiff incorporates by reference herein Paragraphs  
27 1-83 of this Complaint, as though fully set forth.

1       85. Training in use of force, particularly in the lawful  
2 circumstances and proper implementation of restraints which pose a  
3 reasonably anticipated potential for death or serious bodily  
4 injury, and the preparation of police reports is of such importance  
5 in preserving the rights of persons affected that the failure to  
6 provide it adequately would constitute deliberate indifference to  
7 the constitutional rights of those whose rights are violated  
8 because of their improper or unlawful use.

9       86. The training of the SDPD Defendants was inadequate in  
10 that their conduct herein has been manifestly inconsistent with the  
11 standards of training mandated by state and federal law, designed  
12 and intended to accommodate the constitutional obligations of  
13 police officers to respect the constitutional rights of persons  
14 with whom police officers come into contact while performing their  
15 law enforcement responsibilities.

16       87. The aforementioned conduct of the individual SDPD  
17 Officers was caused by the policies, and lack thereof, and by the  
18 lack of adequate training and supervision by the City and SDPD;  
19 further, the latter entities ratified the misconduct of these  
20 officers despite being aware of the totality of the true  
21 circumstances.

22       88. The aforementioned conduct of the individual Murphy's  
23 Club bouncers and Elite Security guards SDPD was caused by the  
24 policies, and lack thereof, and by the lack of adequate training  
25 and supervision by all of the entity defendants herein; further,  
26 the latter entities ratified the misconduct of these officers  
27 despite being aware of the totality of the true circumstances;  
28 further, the entity defendants herein have been negligent and acted

1 in reckless disregard for the rights of Plaintiff and other patrons  
2 by their inadequate policies, as well as the hiring, retention,  
3 training and supervision of the individual defendants by their  
4 respective employers and principals having control over these  
5 matters, and the duty to exercise it, by law or contract.

6        89. The individual Defendants, and each of them, in engaging  
7 in the aforementioned conduct, intended to deprive Plaintiff of her  
8 liberty without due process of law.

9       90. The individual Defendants, and each of them, in engaging  
10 in the aforementioned conduct, acted arbitrarily and capriciously  
11 --- i.e. without a rational basis therefor.

12        91. Defendant SDPD Officers Hill, Krouss and Stafford, in  
13 their conduct once plaintiff was in custody, acted with callous  
14 indifference to Plaintiff's rights and personal well-being, in  
15 violation of her rights under the Due Process Clause of the  
16 Fourteenth Amendment.

PENDENT STATE CLAIMS

18 Plaintiff hereby further alleges the following state claims  
19 under the laws and Constitution of the State of California under  
20 the pendent jurisdiction of the federal courts for claims related  
21 to the above-described federal question civil rights claims under  
22 28 U.S.C. sec.1343; 42 U.S.C. sec.1983; and the First, Fourth and  
23 Fourteenth Amendments and Article III of the Constitution of the  
24 United States.

**FIRST STATE CAUSE OF ACTION**

### **[Assault and Battery]**

[MURPHY'S CLUB; FONTENETTE; OLIVER;  
DOES VI-X & XVII-XVIII]

92. Plaintiff incorporates by reference herein Paragraphs

1 1-91 of this Complaint, as though fully set forth.

2       93. On October 29, 2000, the Chargers played a football game,  
3 hosting the Oakland Raiders, at Qualcomm Stadium. Murphy's Club  
4 was open for business during the game, with Defendants Fontenette  
5 and Oliver on duty as bouncers; Elite Security was providing  
6 security, with Defendants Williams and Atabekian on duty; and  
7 Defendant SDPD Officers Hill, Krouss, Stafford and Cimarrusti were  
8 on duty, with Hill and Krouss assigned as a team to the parking lot  
9 outside the stadium, and Stafford and Cimarrusti assigned as a team  
10 within the stadium.

11       94. Defendant Murphy's Club bouncers Fontenette and Oliver,  
12 by plaintiff's estimate, were over 6' tall and over 250 lbs. each.

13       95. Defendant Elite Security guards Williams and Atabekian,  
14 by plaintiff's estimate, were of average height and weight.

15       96. Defendant SDPD Officer Hill was 6'0" and 325 lbs. and is  
16 grossly out of shape. Defendant SDPD Officer Krouss was 6'4" and  
17 300 lbs. Defendant SDPD Officers Stafford and Cimarrusti, by  
18 plaintiff's estimate, were of average height and weight.

19       97. Plaintiff, her father Robert Acosta, Sr., her brother  
20 Robert Acosta, Jr., and the latter's wife and her sister-in-law,  
21 Susan Acosta, attended the Charger-Raider game in Qualcomm Stadium  
22 on October 29, 2000.

23       98. Plaintiff and Susan Acosta dressed in black for the game,  
24 signifying the Raider colors and their support for the visiting  
25 team. Plaintiff was then 5'4" and 140 lbs.

26       99. Plaintiff's employment at the time in October 2000 was as  
27 a bartender, who had served in that capacity for a number of years;  
28 and as a newly licensed real estate agent.

1       100. Prior to the game, Plaintiff and her family held a  
2 tailgate party in the parking lot of Qualcomm Stadium. During the  
3 tailgate party and the game, Plaintiff drank lightly, while Susan  
4 Acosta drank more heavily.

5       101. During the game, Plaintiff and Susan Acosta left their  
6 seats and, while walking around the stadium, entered Murphy's Club  
7 and paraded through the dense, loud and mostly Charger fan crowd,  
8 yelling Raider chants.

9       102. Within two (2) minutes of their entry into Murphy's  
10 Club, Plaintiff and Susan Acosta were accosted by Defendant  
11 bouncers Fontenette and Oliver and were ejected. Fontenette, in  
12 directing Plaintiff to leave, took hold of her arm, and Plaintiff  
13 pulled away and told him not to touch her. Plaintiff did not  
14 refuse to leave, but Fontenette and Oliver, without waiting or  
15 speaking further, immediately seized hold of Plaintiff, by the  
16 shoulders and legs, and carried her out suspended in air, to loud  
17 cheers of the Charger fans.

18       103. Susan Acosta followed Plaintiff and the bouncers from  
19 the Murphy's Club, and engaged in a vulgar exchange with two (2)  
20 other patrons as they left, with Susan Acosta also using a racial  
21 slur. Plaintiff said nothing and did not resist; nor did she hear  
22 and nor was she aware of the verbal exchange between Susan Acosta  
23 and the other female patrons.

24       104. Outside Murphy's Club, Defendants Fontenette and Oliver  
25 put Plaintiff down, spoke with both Plaintiff and Susan Acosta, and  
26 instructed them not to return to the club. They did not eject them  
27 from the stadium, nor then summon Elite Security nor SDPD Officers.  
28

1 Plaintiff and Susan Acosta walked away after the conversation with  
2 the bouncers concluded.

**SECOND STATE CAUSE OF ACTION**

**[Assault and Battery]**

[CITY; QUALCOMM STADIUM; CHARGERS; ELITE SECURITY;  
HILL; KROUSS; STAFFORD; ATEBEKIAN; WILLIAMS;  
DOES I-V, XI-XVI & XIX-XX]

6 105. Plaintiff incorporates by reference herein Paragraphs  
7 1-104 of this Complaint, as though fully set forth.

8       106. Plaintiff and Susan Acosta then returned to their seats.  
9 Shortly thereafter, Plaintiff accompanied Susan Acosta when she  
10 again left her seat to use the stadium restroom.

11       107. While walking toward the restroom, Plaintiff and Susan  
12 Acosta passed within hailing distance those other patrons with  
13 which Susan Acosta had had the verbal exchange as she left Murphy's  
14 Club. The patrons and Susan Acosta resumed their verbal exchange,  
15 with the patrons declaring that they thought they had been ejected  
16 from the game and would have them ejected from the stadium, and  
17 Susan Acosta repeating the racial slur, as she also walked closer  
18 to the other patrons. Plaintiff did not participate in the verbal  
19 exchange, and did not join Susan Acosta when she approached the  
20 other patrons.

21           108. The other patrons then walked away, and Susan Acosta  
22 went into the restroom, while Plaintiff waited for her outside the  
23 door.

24       109. While Plaintiff was waiting for Susan Acosta outside the  
25 door of the stadium restroom, she was approached by Defendant  
26 Security Guards Atabekian and Williams, and then by SDPD Officers  
27 Hill and Krouss, who asked her to accompany them to the Elite

1 Security Office to check whether she had been previously ejected  
2 from the game, and requested identification.

3 110. Defendant SDPD Officers Hill and Krouss were out of  
4 position when they were inside the stadium, having left their posts  
5 in the parking lot.

6 111. Defendant Hill had spoken with security within Murphy's  
7 Club. Defendants Fontenette and Oliver falsely accused Plaintiff  
8 of engaging in fighting within the club.

9 112. Defendant Fontenette claimed that he first saw Plaintiff  
10 from a distance within Murphy's Club, trying to physically pull  
11 Susan Acosta from the grip of Defendant Oliver. He claimed that he  
12 did not see what originally instigated Oliver to seize Susan  
13 Acosta, but that Oliver later told him that Plaintiff and Susan  
14 Acosta had harassed and/or been fighting with other patrons. He  
15 also claimed that he then sought to pull Plaintiff from Oliver and  
16 Susan Acosta; that Plaintiff then struck and kicked him; that he  
17 and Oliver then carried her out of the club; and that he did not  
18 seek to eject them from the stadium, but instructed them not to  
19 return to the club.

20 113. Defendant Oliver claimed that he first saw Plaintiff  
21 from a distance within Murphy's Club, resisting, striking and  
22 kicking Defendant Fontenette. He claimed that he did not see what  
23 originally instigated Fontenette to seize Plaintiff, but that  
24 Fontenette later told him that Plaintiff had harassed and/or been  
25 fighting with other patrons. He also denied any awareness of Susan  
26 Acosta, or any contact with her or any other associate of  
27 Plaintiff; but admitted that he aided Fontenette in carrying  
28

1 Plaintiff from the club; and that upon her ejection, she was told  
2 not to return to the club.

3       114. Defendant SDPD Officer Hill claims that he spoke with  
4 Defendant Fontenette, who informed him that Plaintiff had been  
5 fighting in Murphy's Club; had been ejected from the club; and that  
6 he intended to eject her and Susan Acosta from the stadium, but  
7 they ran way before he could do so. Defendant Fontenette denies  
8 speaking to Defendant Hill prior to Plaintiff's arrest; he did  
9 speak with Defendant SDPD Officer Stafford later, and gave the  
10 largely false version of events set forth in Paragraph 53 after  
11 seeing Plaintiff carried out in hogtied position.

12       115. Defendant Oliver spoke to Defendant Officer SDPD Hill,  
13 and gave him the largely falsified version of events set forth in  
14 Paragraph 54.

15       116. Plaintiff responded to Defendants Hill, Krouss,  
16 Atebekian and Williams by attempting to say that she had not been  
17 ejected, by attempting to explain what had happened at Murphy's  
18 Club, and by attempting to say that she did not have identification  
19 on her but could retrieve it.

20       117. Defendants Hill, Krouss, Atabekian and Williams would  
21 not permit Plaintiff to speak, and then ordered her to leave the  
22 stadium. When Plaintiff again attempted to speak and explain, she  
23 was placed under arrest without warning by Defendant Hill, who with  
24 excessive force from the outset attempted, also without warning, to  
25 turn Plaintiff around and handcuff her.

26       118. When Plaintiff did not respond promptly enough to the  
27 initial use of force as above-described, Defendant SDPD Officer  
28

1 Hill then immediately escalated the use of force to the use of  
2 deadly force in the form of the carotid choke hold.

3       119. Defendant SDPD Officer Hill, apparently unable to  
4 utilize lesser levels of force which also require reasonably  
5 adequate physical fitness and agility, has frequently used the  
6 carotid hold in the past, but is inadequately trained and is  
7 incompetent in the circumstances of its lawful use and proper  
8 implementation. He is unfamiliar with SDPD policy and training on  
9 its lawful use and proper implementation, and did not utilize those  
10 in applying the hold. Defendant Hill was actually garroting  
11 Plaintiff, with her feet off the ground, at times choking her at  
12 her windpipe, for up to 1-3 minutes, until he ceased as she went  
13 unconscious from lack of air in her lungs.

14       120. The manner in which Defendant Hill was choking Plaintiff  
15 and suspending her by her neck put her at risk of death or serious  
16 bodily injury; indeed, a heavier person would likely have suffered  
17 a broken neck.

18       121. The manner in which Defendant Hill choked Plaintiff  
19 constituted deadly force, even though Plaintiff at no time used any  
20 unlawful force which would justify any use of force by the  
21 officers, much less deadly force.

22       122. As Plaintiff flailed in self-defense and struggle for  
23 life while the illegal and improper choke hold was being  
24 administered, Defendant SDPD Officer Hill ceased choking Plaintiff  
25 and, with the assistance of SDPD Officer Krouss threw Plaintiff to  
26 the pavement, face first, and handcuffed her behind her back; then,  
27 Officers Hill and Krouss, joined by Officer Stafford, hogtied  
28 Plaintiff; then the officers left Plaintiff face down on the

1 pavement in the hogtied position for a substantial period of time;  
2 and then later carried her out face down, suspended by her arms and  
3 legs, contrary to safe procedures and putting her in great pain in  
4 her shoulders.

5       123. Defendant SDPD Officer Hill, apparently unable to utilize  
6 lesser levels of force which also require reasonably adequate  
7 physical fitness and agility, has frequently used the hogtie  
8 restraint in the past, but is inadequately trained and is  
9 incompetent in the circumstances of its lawful use and proper  
10 implementation. He is unfamiliar with SDPD policy and training on  
11 its lawful use and proper implementation, and did not utilize those  
12 in applying the restraint or in carrying the restrained suspect.  
13 He is also unfamiliar with other lesser forms of restraint for  
14 resisting offenders, including those available when there are other  
15 officers present to assist.

16       124. Defendant SDPD Officers Krouss and Stafford are  
17 inadequately trained and incompetent in the circumstances for  
18 lawful use and proper implementation of the maximum restraint  
19 "hogtying". They are unfamiliar with SDPD policy and training on  
20 its lawful use and proper implementation, and did not utilize those  
21 in applying the restraint or in carrying the restrained suspect.  
22 They are also unfamiliar with other lesser forms of restraint for  
23 resisting offenders, including those available when there are other  
24 officers present to assist.

25       125. The manner in which Defendants Hill, Krouss and Stafford  
26 controlled and restrained Plaintiff constituted deadly force, even  
27 though Plaintiff at no time used any unlawful force which would  
28 justify any use of force by the officers, much less deadly force.

1       126. The manner in which Defendants Hill, Krouss and Stafford  
2 hogtied Plaintiff, then placed her face down on the pavement, then  
3 carried her our face down and suspended by her limbs, put her at  
4 risk of death or serious bodily injury; indeed, a heavier person  
5 would likely have suffered death or serious injury.

6       127. Defendant Elite Security guards Atebekian and Williams  
7 assisted SDPD Officers Hill and Krouss in the use of force on  
8 Plaintiff while she was being choked and hogtied, each of them also  
9 using separately and in concert unlawful, unnecessary, unreasonable  
10 and excessive force on Plaintiff.

11       128. Plaintiff was carried to the holding area in the  
12 stadium, wherein the videotaping system was accidentally not turn  
13 on, leaving no film record.

14       129. Defendant SDPD Officer Cimarrusti permitted Susan  
15 Acosta, who had emerged from the restroom in the interim, to go and  
16 retrieve Plaintiff's father, who she identified as a peace officer.  
17 Officer Cimarrusti informed Officer Acosta where the holding area  
18 was located, but officers in the holding area refused to permit  
19 Officer Acosta to see or speak with his daughter.

20       130. Plaintiff suffered numerous bruises and soreness on her  
21 body, and injury and soreness to her shoulders, neck and back area.

22       131. The conduct of the Defendant SDPD Officers Hill, Krouss  
23 and Stafford constituted unlawful, unnecessary, excessive and  
24 unreasonable use of force.

25       132. The unlawful, unnecessary, unreasonable and excessive  
26 force employed in arrest was at all times unreasonable under the  
27 totality of the circumstances.

28

1                           **THIRD STATE CAUSE OF ACTION**  
2                           **[False Arrest & Imprisonment]**  
3                           **[CITY; QUALCOMM STADIUM; CHARGERS; ELITE SECURITY;**  
4                           **MURPHY'S CLUB; HILL; KROUSS; STAFFORD; OLIVER**  
5                           **FONTENETTE; ATEBEKIAN; WILLIAMS; DOES I-XX]**

6                         133. Plaintiff incorporates by reference herein Paragraphs  
7                         1-132 of this Complaint, as though fully set forth.

8                         134. Plaintiff was arrested initially for trespass, and  
9                         thereafter arrested and charged with misdemeanors of assault and  
10                         battery on peace officers; assault and battery on security guards;  
11                         and resisting arrest by police officers.

12                         135. There was no probable cause for the warrantless arrest  
13                         of Plaintiff on any of the charges.

14                         136. Plaintiff did not commit any offense in the presence of  
15                         the individual defendant SDPD officers, nor in the presence of any  
16                         other sworn peace officer.

17                           **FOURTH CAUSE OF ACTION**  
18                           **[Unlawful Ejection & Discrimination Under Unruh Act]**  
19                           **[CITY; QUALCOMM STADIUM; CHARGERS; ELITE SECURITY;**  
20                           **MURPHY'S CLUB; HILL; KROUSS; STAFFORD; OLIVER**  
21                           **FONTENETTE; ATEBEKIAN; WILLIAMS; DOES I-XX]**

22                         137. Plaintiff incorporates by reference herein Paragraphs  
23                         1-136 of this Complaint, as though fully set forth.

24                         138. Defendants Qualcomm Stadium and Chargers are public  
25                         accommodations as specified under the Unruh Act, California Civil  
26                         Code secs. 50 et seq.

27                         139. Each and all of the acts of the individual defendants  
28                         other than defendant SDPD Officer Cimmarrusti, caused and resulted  
29                         in the ejection of Plaintiff from the stadium and other  
30                         discriminatory acts, specified above, and directed against  
31                         Plaintiff, in violation of the Unruh Act.

1       140. The conduct of the individual defendants, other than  
2 defendant SDPD Officer Cimmarrusti, was at all times unlawfully  
3 discriminatory and arbitrary and capricious, and without lawful  
4 justification under the Unruh Act.

FIFTH STATE CAUSE OF ACTION  
[Malicious Prosecution]  
[All Defendants]

7 141. Plaintiff incorporates by reference herein Paragraphs  
8 1-140 of this Complaint, as though fully set forth.

9       142. Thereafter, the individual SDPD Officers, and each of  
10 them, filed falsified police reports, also containing material  
11 omissions concerning the unlawful conduct of defendants and the  
12 justifying circumstances for Plaintiff's conduct; which  
13 misrepresented the true facts of what had occurred, falsely stating  
14 and suggesting that Plaintiff had committed crimes in Murphy's Club  
15 and in response to efforts to eject and arrest her; and falsely  
16 characterized events to support false conclusions that there was  
17 probable cause for Plaintiff's arrest and subsequent prosecution on  
18 those charges, and false conclusions that the use of force by  
19 Plaintiff justified the use of force by the officers.

20       143. Thereafter, the individual Elite Security Guards and  
21 Murphy's Club bouncers, and each of them, gave false statements  
22 also containing material omissions concerning the unlawful conduct  
23 of defendants and the justifying circumstances for Plaintiff's  
24 conduct; which misrepresented the true facts of what had occurred,  
25 falsely stating and suggesting that Plaintiff had committed crimes  
26 in Murphy's Club and in response to efforts to eject and arrest  
27 her; and falsely characterized events to support false conclusions  
28 that there was probable cause for Plaintiff's ejection, arrest and

1 subsequent prosecution on those charges, and false conclusions that  
2 the use of force by Plaintiff justified the use of force by the  
3 bouncers, security guards and officers.

4       144. Based on the falsified submissions of the individual  
5 Defendants, the San Diego Office of City Attorney issued a criminal  
6 misdemeanor complaint against Plaintiff - i.e. as a result of the  
7 aforementioned false reports and statements, and the underlying  
8 unlawful conduct, Plaintiff was prosecuted on the charges for which  
9 she was arrested. Those false reports and statements were  
10 submitted to maliciously prosecute Plaintiff.

11        145. The individual defendants sought the prosecution of  
12 Plaintiff on the criminal charges for which she was prosecuted.

13        146. But for the falsified and materially misleading reports  
14 and statements as above-described, there was no probable cause for  
15 any of the criminal charges on which Plaintiff was prosecuted.

16        147. The criminal prosecution was concluded with a judgment  
17 of acquittal in favor of Plaintiff - i.e. On June 19, 2001,  
18 following trial by jury, Plaintiff was acquitted on all charges.

19        148. At all relevant times herein, the individual defendants,  
20 in seeking the prosecution of Plaintiff and submitting the  
21 falsified and materially misleading reports and statements, as  
22 above-described, acted with malice.

SIXTH STATE CAUSE OF ACTION  
[Abuse of Process]  
[All Defendants]

25 149. Plaintiff incorporates by reference herein Paragraphs  
26 1-148 of this Complaint, as though fully set forth.

27       150. The aforementioned false reports and statements were  
28 intended to cause the prosecution and conviction of Plaintiff on

1 false charges in order to justify the unlawful, unnecessary,  
2 excessive and unreasonable use of force by the individual defendant  
3 bouncers, officers and security guards; to justify the unlawful and  
4 unreasonable ejection and arrest of Plaintiff; and to protect each  
5 and all of them, and their employers and principals, from the  
6 threat and risk of criminal and civil sanction and/or civil damages  
7 and other remedies. This constitutes a malicious, unlawful and  
8 improper ulterior motive for the prosecution and an abuse by the  
9 individual defendants of the process of the criminal courts.

10        151. There was no probable cause for the prosecution of  
11 Plaintiff on any of the charges, nor for the abuse of process  
12 directed to Plaintiff.

SEVENTH STATE CAUSE OF ACTION  
[Denial of Free Speech Rights]  
[All Defendants]

15        152. Plaintiff incorporates by reference herein Paragraphs  
16 1-151 of this Complaint, as though fully set forth.

17        153. The false arrest and unlawful use of force by the  
18 individual SDPD Officer defendants Hill, Krouse and Stafford denied  
19 Plaintiff's free speech rights under the California Constitution  
20 when she sought to exercise those rights in the initial contact  
21 with Plaintiff, when she sought to explain herself and clarify the  
22 circumstances which were being misapprehended and misrepresented.

23        154. The malicious prosecution and abuse of process by all of  
24 the individual defendants were designed to frustrate Plaintiff in  
25 the anticipated exercise of her free speech and petition rights  
26 under the California Constitution to seek administrative or civil  
27 redress for their false arrest and unlawful use of force, and the

1 other misconduct leading to those abuses of authority and criminal  
2 acts against Plaintiff.

3                   **EIGHTH STATE CAUSE OF ACTION**  
4                   **[Intentional Infliction of Emotional Distress]**  
5                   **[All Defendants]**

6               155. Plaintiff incorporates by reference herein Paragraphs  
7               1-154 of this Complaint, as though fully set forth.

8               156. Defendants, in engaging the aforementioned acts, acted  
9               with malice, intended to inflict emotional distress, and did  
inflict emotional distress, engaging in outrageous conduct.

10                  **NINTH STATE CAUSE OF ACTION**  
11                  **[Negligent Infliction of Emotional Distress]**  
12                  **[All Defendants]**

13               157. Plaintiff incorporates by reference herein Paragraphs  
14               1-156 of this Complaint, as though fully set forth.

15               158. Defendants had a duty of care toward Plaintiff  
16               throughout their actions in respect to her, yet negligently failed  
to perform that duty, causing her great emotional distress.

17                  **TENTH STATE CAUSE OF ACTION**  
18                  **[Breach of Contract]**  
19                  **[City; Qualcomm; Chargers; Does I-V & XVI]**

20               159. Plaintiff incorporates by reference herein Paragraphs  
21               1-158 of this Complaint, as though fully set forth.

22               160. Plaintiff had a valid ticket to attend the Raiders-  
23               Chargers football game on October 29, 2000, and said ticket  
24               constituted a contract between Plaintiff and Defendants City,  
Qualcomm and Chargers.

25               161. All of the acts and omissions of the individual  
26               defendants, acting as agents of Defendants City, Qualcomm &  
27               Chargers, breached the contract terms of Plaintiff's admission  
28               ticket to the football game.

**ELEVENTH STATE CAUSE OF ACTION**  
[Breach of Covenant of Good Faith and Fair Dealing]  
[City; Qualcomm; Chargers; Does I-V & XVI]

3 162. Plaintiff incorporates by reference herein Paragraphs  
4 1-161 of this Complaint, as though fully set forth.

5        163. Implicit in the ticket-contract was a covenant of good  
6 faith and fair dealing.

7       164. Under said covenant, Plaintiff was entitled to the quiet  
8 enjoyment of the sporting contest and to be free of any unlawful  
9 conduct by agents of the City, Qualcomm and Chargers.

10        165. Defendants City, Qualcomm and Chargers, and their  
11 agents, had a duty, individually and collectively, to comply with  
12 their contractual obligations to Plaintiff, including any implied  
13 covenants and any duties, responsibilities and restraints imposed  
14 by operation of law; and a duty to ensure that their respective  
15 agents complied as well.

16 166. Defendants City, Qualcomm and Chargers, and their  
17 agents, individually and collectively, failed to comply with those  
18 duties as specified in Paragraph 117, and intentionally and/or  
19 negligently failed to ensure that their respective agents complied.

20        167. All of the acts and omissions of the individual  
21 defendants, acting as agents of Defendants City, Qualcomm &  
22 Chargers, breached the aforementioned covenants.

**TWELFTH STATE CAUSE OF ACTION**  
[Negligent Hiring, Supervision and Retention; Ratification]  
[All Entity Defendants]

25       168. Plaintiff incorporates by reference herein Paragraphs  
26 1-167 of this Complaint, as though fully set forth.

169. The entity Defendants individually and collectively had  
a duty of care toward Plaintiff and all other game patrons, by

1 contract, agreement or by operation of law, for the lawful and  
2 objectively reasonable business management and/or supervision of  
3 the individual defendants, yet negligently failed to perform that  
4 duty.

5       170. The entity defendants individually and collectively had  
6 a duty of care toward Plaintiff and all other game patrons, by  
7 contract, agreement or by operation of law, not to retain the  
8 services of officers, security personnel or security companies who  
9 fail to conduct business, or to supervise subordinates or  
10 subordinate entities, in accordance with the law and objectively  
11 reasonable business management and supervisory practices; and to  
12 make such periodic inquiries and investigations as necessary to  
13 stay reasonably informed of the manner in which their agents  
14 subordinate entities perform their duties and in response to  
15 specific complaints made by patrons. The entity defendants  
16 individually and collectively negligently failed to perform those  
17 duties.

18       171. The entity defendants individually and collectively had  
19 a duty of care toward Plaintiff and all other game patrons, by  
20 contract, agreement or by operation of law, not to hire, contract  
21 with or retain the services of officer, security personnel or  
22 security companies who fail to conduct business or to deal with  
23 patrons in accordance with the law and objectively reasonable  
24 security and law enforcement practices; and to make such periodic  
25 inquiries and investigations as necessary to stay reasonably  
26 informed of the manner in which their agents and subordinate  
27 entities perform their duties and in response to specific  
28 complaints made by patrons or other such notice. The entity

1 defendants individually and collectively negligently failed to  
2 perform those duties.

3       172. Training in use of force, particularly in the lawful  
4 circumstances and proper implementation of restraints which pose a  
5 reasonably anticipated potential for death or serious bodily  
6 injury, and the preparation of police reports is of such importance  
7 in preserving the rights of persons affected that the failure to  
8 provide it adequately would constitute deliberate indifference to  
9 the legal and constitutional rights of those whose rights are  
10 violated because of their improper or unlawful use.

11       173. The training of the SDPD Defendants was inadequate in  
12 that their conduct herein has been manifestly inconsistent with the  
13 standards of training mandated by state and federal law, designed  
14 and intended to accommodate the constitutional obligations of  
15 police officers to respect the constitutional rights of persons  
16 with whom police officers come into contact while performing their  
17 law enforcement responsibilities.

18       174. The aforementioned conduct of the individual SDPD  
19 Officers was caused by the policies, and lack thereof, and by the  
20 lack of adequate training and supervision by the City and SDPD;  
21 further, the latter entities ratified the misconduct of these  
22 officers despite being aware of the totality of the true  
23 circumstances.

24       175. The aforementioned conduct of the individual Murphy's  
25 Club bouncers and Elite Security guards SDPD was caused by the  
26 policies, and lack thereof, and by the lack of adequate training  
27 and supervision by all of the entity defendants herein; further,  
28 the latter entities ratified the misconduct of these officers

1 despite being aware of the totality of the true circumstances;  
2 further, the entity defendants herein have been negligent and acted  
3 in reckless disregard for the rights of Plaintiff and other patrons  
4 by their inadequate policies, as well as the hiring, retention,  
5 training and supervision of the individual defendants by their  
6 respective employers and principals having control over these  
7 matters, and the duty to exercise it, by law or contract.

8                   **COMMON DAMAGES ALLEGATIONS AS TO ALL DEFENDANTS  
9                   AND ALL FEDERAL AND PENDENT STATE CLAIMS**

10                 176. Each of the individual Defendants participated in and/or  
11 proximately caused the aforementioned unlawful conduct, and acted  
12 in concert with the other named defendants and other officers and  
13 security guards, whose identities and/or extent of involvement are  
14 not yet known to plaintiffs.

15                 177. Plaintiff incurred approximately \$50,000 in legal costs  
16 and attorneys' fees to defend herself against the malicious  
17 criminal prosecution and abuse of process, which were caused by the  
18 aforementioned conduct of the individual defendants.

19                 178. Plaintiff incurred medical expenses for her physical  
20 injuries, which were caused by the aforementioned conduct of the  
21 individual defendants.

22                 179. Plaintiff incurred loss of employment income because of  
23 her arrest, injuries and the malicious prosecution, which were  
24 caused by the aforementioned conduct of the individual defendants.

25                 180. Plaintiff suffered substantial pain, emotional distress  
26 and anguish, humiliation and substantial damage to her personal and  
27 professional reputation because of her arrest, injuries and the

1 malicious prosecution, which were caused by the aforementioned  
2 conduct of the individual defendants.

3       181. The conduct of the individual defendants, and each of  
4 them, caused Plaintiff's physical injuries.

5       182. The conduct of the individual defendants, and each of  
6 them, caused Plaintiff's arrest and incarceration until she was  
7 released on bail.

8       183. The conduct of the individual defendants, and each of  
9 them, caused Plaintiff's prosecution on criminal charges, and the  
10 legal costs she incurred.

11       184. The conduct of the individual defendants, and each of  
12 them, caused Plaintiff's loss of income.

13       185. The conduct of the individual defendants, and each of  
14 them, caused Plaintiff's pain, emotional distress and anguish,  
15 humiliation and substantial damage to her personal and professional  
16 reputation.

17       186. The acts and omissions of the entity defendants, and  
18 each of them, caused Plaintiff's physical injuries.

19       187. The acts and omissions of the entity defendants, and  
20 each of them, caused Plaintiff's arrest and incarceration until she  
21 was released on bail.

22       188. The acts and omissions of the entity defendants, and  
23 each of them, caused Plaintiff's prosecution on criminal charges,  
24 and the legal costs she incurred.

25       189. The acts and omissions of the entity defendants, and  
26 each of them, caused Plaintiff's loss of income.

27       190. The acts and omissions of the entity defendants, and  
28 each of them, caused Plaintiff's pain, emotional distress and

1 anguish, humiliation and substantial damage to her personal and  
2 professional reputation.

3       191. The Defendants and each of them, in engaging in the  
4 aforementioned conduct, intended to act as they did, and intended  
5 to violate Plaintiff's rights.

6       192. As a direct and proximate result of the aforementioned  
7 acts and/or omissions of the Defendants and each of them,  
8 Plaintiff:

9               a. Has been subjected to police terror, accompanied by  
10 apparent threat to her life by strangulation, and will  
11 continue in the future to be in fear of such police terror;

12               b. Has suffered assault and battery, and other painful  
13 physically abusive treatment while being arrested and while in  
14 custody;

15               c. Has suffered the humiliation and other anguish of  
16 arrest, incarceration followed by a period in custody, and  
17 having a serious criminal arrest record which can influence  
18 future state professional licensing decisions;

19               d. Has suffered through the burdens, fear, humiliation,  
20 distress and anguish of a criminal prosecution with the  
21 attendant risks of conviction, incarceration and a criminal  
22 record;

23               e. Has suffered loss of income;

24               f. Has incurred medical and related expenses for her  
25 injuries;

26               g. Incurred legal expenses in the underlying criminal  
27 prosecution;

28               h. Has suffered a deprivation of her First Amendment

1 rights, and fears to exercise the rights in the future;

2 i. Has suffered extreme humiliation, pain, emotional  
3 distress and mental anguish, from the date of said acts until  
4 now, and will continue to so suffer in the future;

5 j. Lost the value of her ticket to the Raiders-Chargers  
6 game on October 29, 20000.

7 193. At all relevant times herein, the individual defendants,  
8 and each of them, acted with malice and reckless disregard for  
9 plaintiffs' constitutional rights under the First, Fourth and  
10 Fourteenth Amendments to the Constitution of the United States,  
11 entitling Plaintiff to punitive damages from the individual  
12 defendants and each of them.

13 194. Because of the ratification by the entity defendants of  
14 the misconduct of the individual defendants, and each of them,  
15 Plaintiff is entitled to punitive damages against each of the  
16 entity defendants except the City of San Diego.

17 **PRAYER**

18 **WHEREFORE**, Plaintiff seeks judgment against all defendants  
19 jointly and severally, except as specifically indicated, for:

20 1. Compensatory damages according to proof;

21 2. Special damages, including but not limited to, attorneys'  
22 fees and other legal costs, loss of income and employment benefits,  
23 lost value of the ticket for the Raiders-Chargers game, and damages  
24 to Plaintiff's personal and professional reputation, in an amount  
25 to be determined at trial, according to proof;

26 3. Punitive damages in the amount of \$500,000. as Defendant  
27 SDPD Officer Hill; in the amount of \$100,000 as to each individual

28

1 defendant; and in the amount of \$1,000,000 as to each entity  
2 defendant except the City of San Diego;

3       4. Reasonable attorneys' fees and costs of suit pursuant to  
4 42 U.S.C. sec.1988 and California Civil Code sec.50 et seq.;

5. For injunctive relief according to proof;

6        6. For such further relief as the Court may deem necessary  
7 and proper.

8 Dated: October 26, 2001  
9  
10  
11

~~Meir J. Westreich  
Attorney for Plaintiff~~

**DEMAND FOR JURY TRIAL**

13 Plaintiff demands trial by jury.

14 Dated: October 26, 2001

~~Meir J. Westreich  
Attorney for Plaintiff~~

1 MEIR J. WESTREICH  
2 Attorney at Law  
2 221 East Walnut, Suite 200  
Pasadena, California 91101  
3 626-440-9906

4

5 Attorney for Plaintiff

6

7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 ELIZABETH M. ACOSTA, ) Case No.  
12 Plaintiff, )  
13 ) COMPLAINT FOR DAMAGES AND  
14 vs. ) FOR INJUNCTIVE RELIEF  
15 CITY OF SAN DIEGO, a municipal )  
corporation; GARY HILL, JOSEPH )  
KROUSS, ERIC STAFFORD, RAPHAEL )  
CIMARRUSTI & DOES I-V, in their )  
official & individual capacities; ) JURY DEMANDED  
16 QUALCOMM STADIUM, an independent )  
municipal agency; VOLUME SERVICES )  
17 OF AMERICA dba MURPHY'S CLUB; )  
MURPHY'S CLUB; HENRY FONTENETTE, )  
MICHAEL OLIVER & DOES VI-X, in )  
their representative & individual )

25

26

27

28

ATTACHMENT A

1 MEIR J. WESTREICH  
2 Attorney at Law  
2 221 East Walnut, Suite 200  
Pasadena, California 91101  
3 626-440-9906

4

5 Attorney for Plaintiff

6

7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 ELIZABETH M. ACOSTA, ) Case No.  
12 Plaintiff, )  
13 ) COMPLAINT FOR DAMAGES AND  
14 vs. ) FOR INJUNCTIVE RELIEF  
15 CITY OF SAN DIEGO, a municipal )  
16 corporation; GARY HILL, JOSEPH )  
KROUSS, ERIC STAFFORD, RAPHAEL )  
CIMARRUSTI & DOES I-V, in their )  
17 official & individual capacities; ) JURY DEMANDED  
QUALCOMM STADIUM, an independent )  
municipal agency; VOLUME SERVICES )  
18 OF AMERICA dba MURPHY'S CLUB; )  
MURPHY'S CLUB; HENRY FONTENETTE, )  
MICHAEL OLIVER & DOES VI-X, in )  
19 their representative & individual )  
20 capacities; ELITE SHOW SERVICES, )  
Inc.; DONALD WILLIAMS, VLADIMIR )  
ATABEKIAN & DOES XI-XV, in their )  
21 representative & individual )  
capacities; SAN DIEGO CHARGERS, )  
INC.; DOES XVI-XX, )  
22 )  
Defendants. )  
23 )  
24 )

25

26

27

28

ATTACHMENT A

ORIGINAL

FILED  
10/29/01

1844

(Rev. 1/99)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law or local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk's Office in preparing the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I. (A) PLAINTIFFS

ELIZABETH M. ACOSTA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

## SEE ATTACHMENT "A"

BY:

DEPUTY  
SAN DIEGOCOUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

MEIR J. WESTREICH  
221 E. WALNUT AVENUE, SUITE 200  
PASADENA, CALIFORNIA 91101  
(626)440-9906

## ATTORNEYS (IF KNOWN)

UNKNOWN

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

 U.S. Government Plaintiff Federal Question  
(U.S. Government Not a Party) U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State

PT DEF

  Incorporated or Principal Place of Business in This State  4 4

Citizen of Another State

  Incorporated and Principal Place of Business in Another State  5 5

Citizen or Subject of a Foreign Country

  Foreign Nation  6 6

## IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES (UNLESS DIVERSITY). 42 U.S.C. 1983 CLAIMS FOR FALSE ARREST, EXCESSIVE FORCE AND MALITIOUS PROSECUTION ARISING FROM ARREST AT QUALCOMM STADIUM DURING CHARGERS-RAIDERS GAME AND SUBSEQUENT CRIMINAL PROSECUTION.

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	PORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 Rule Reapportionment
<input type="checkbox"/> 120 Marine	310 Airplane	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 420 Other Fraud & Tort	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	315 Airplane Bodily Liability	<input type="checkbox"/> 363 Personal Injury - Product Liability	<input type="checkbox"/> 422 Worldwide 32 USC 132	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	320 Animal, Libel & Slander	<input type="checkbox"/> 365 Adverse Possession of Property 21 USC 1	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 435 Commerce/ICC Rules/Reg.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	330 Student Employee Liability	<input type="checkbox"/> 366 Adverse Personal Injury Product Liability	<input type="checkbox"/> 440 Copyrights	<input type="checkbox"/> 460 Depositions
<input type="checkbox"/> 151 Maritime Act	340 Marine	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 450 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defective Student Loans (Excl. Veterans)	345 Marine Product Liability	<input type="checkbox"/> 460 Occupational Safety/Health	<input type="checkbox"/> 461 Title 17 USC 1075(b)	<input type="checkbox"/> 480 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	350 Motor Vehicle	<input type="checkbox"/> 461 Other Fraud	<input type="checkbox"/> 462 Black Lung (923)	<input type="checkbox"/> 490 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholder Suit	355 Motor Vehicle Product Liability	<input type="checkbox"/> 471 Truth in Lending	<input type="checkbox"/> 463 SSI/Title XVI	<input type="checkbox"/> 505 Consumer Protection (2 USC)
<input type="checkbox"/> 160 Other Contract	360 Other Personal Injury	<input type="checkbox"/> 480 Other Personnel Property Damage	<input type="checkbox"/> 464 SSID Title XVII	<input type="checkbox"/> 510 Agricultural Act
<input type="checkbox"/> 165 Contract Product Liability		<input type="checkbox"/> 485 Property Damage Product Liability	<b>FEDERAL TAX LAWS</b>	<input type="checkbox"/> 520 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 470 Power (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 530 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	411 Voting	<input type="checkbox"/> 510 Misdemeanor Violent Sentence Habens Corpus	<input type="checkbox"/> 484 Energy Allocation Act	<input type="checkbox"/> 540 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	412 Employment	<input type="checkbox"/> 520 General	<input type="checkbox"/> 485 Freedom of Information Act	<input type="checkbox"/> 545 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	413 Housing/Accommodation	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 490 Appeal of Fee Determination Under Equis' Access to Justice	<input type="checkbox"/> 550 Constitutionality of State Law
<input type="checkbox"/> 240 Rent to Land	414 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 560 Other Statutory Actions	<input type="checkbox"/> 560 Other Statutory Actions
<input type="checkbox"/> 245 Rent Pretermitt Liability	X 416 Other Civil Rights	<input type="checkbox"/> 550 Prison Conditions		
<input type="checkbox"/> 250 Any Other Real Property				

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

Original Proceeding     Removed from State Court     Remanded from Appellate Court     Reinstated or Kept Open     Transferred from another district (specify)     Multidistrict Litigation     Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER Rule 23    DEMAND \$ ACCORDING TO PROOF    Check YES if it is intended in complaint

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE DATE OCTOBER 25, 2001 SIGNATURE OF ATTORNEY OF RECORD

CB #190 10278 10/29/01